

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

Construction Funding Corporation, and
Scott C. Michaels, Designated Broker,

Respondents.

NO. C-04-014-04-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO REVOKE LICENSE,
IMPOSE FINES, AND PROHIBIT FROM
PARTICIPATION IN THE MORTGAGE BROKER
INDUSTRY

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of February 13, 2004, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **Construction Funding Corporation ("Construction Funding")** is known to have conducted the business of a mortgage broker at:

425 North Martingale Road Suite 1350
Schaumburg Illinois 60173

B. **Scott C. Michaels ("Michaels")** is known to be an owner of Construction Funding. Michaels was named designated broker on July 31, 2000.

1.2 License: Construction Funding was licensed by the Department of Financial Institutions ("Department") to conduct business as a mortgage broker on July 31, 2000, and has continued to be licensed to date.

1.3 Failure to Pay Annual Assessment: Payment of the annual assessment is due to the Department no later than the last business day of July of each year. To date, the Department has not received the following annual assessments due from Respondents:

A. Payment of the annual assessment of \$530.86 for the year 2003 was due to the Department no later than the last business day of July 2003.

B. Payment of the annual assessment of \$530.86 for the year 2004 will be due to the Department no later than the last business day of July 2004.

1.4 Failure to Maintain Bond: On September 15, 2003, the Department received notice from RLI Surety Division of RLI Insurance Company, that Construction Funding's surety bond was cancelled. To date, Respondents have not notified the Department that Construction Funding's surety bond had been cancelled, nor have Respondents replaced the surety bond.

1.5 Failure to Submit Continuing Education Certificate: A certificate of satisfactory completion of an approved continuing education course was due to the Department no later than the last day of July of 2003. To date, the Department has not received the required certificate due from Respondent Michaels.

1.6 Failure to Respond to Directive Requirement: On October 22, 2003, the Department issued a directive to Respondents requiring replacement of Construction Funding's bond. To date, the Department has not received a response to its directive.

1.7 Failure to Notify DFI of Significant Developments:

A. As stated in 1.4 above, to date, Respondents have not notified the Department of the cancellation of its surety bond.

B. Construction Funding's corporate license, maintained with the office of the Secretary of State, expired on March 31, 2003. To date, Respondents have not notified the Department of this change in Construction Funding's status with the Secretary of State, nor has Construction Funding renewed its corporate license.

C. Construction Funding's Master Business License account with the Washington State Department of Licensing was dissolved on June 23, 2003. To date, Respondents have not notified the Department of this change in Construction Funding's Master Business License.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement to Pay Annual Assessments: Pursuant to RCW 19.146.228 and WAC 208-660-060(3), every licensed mortgage broker shall pay an annual assessment no later than the last business day of the month in which the anniversary date of the issuance of the license occurs.

2.2 Requirement to Maintain Bond: Pursuant to RCW 19.146.205(4), each licensee shall file and maintain a surety bond.

2.3 Requirement to Submit Certificate of Completion of Continuing Education: Pursuant to RCW 19.146.215, the designated broker of every licensee shall complete an annual continuing education requirement. Pursuant to WAC 208-660-042, each licensee must file annually a certificate of satisfactory completion of an approved continuing education course.

2.4 Requirement to Notify of Significant Developments: Pursuant to WAC 208-660-150(1)(e), every licensee must notify the Director within thirty days after receiving notification of the cancellation of the licensee's surety bond. Pursuant to WAC 208-660-150(3)(e) and (f), every licensee must notify the Director within five days after a change in the licensee's state master business licensee or standing with the state of Washington Secretary of State.

2.5 Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(ii) and (iii), and WAC 208-660-160(1), (2), (8), and (13), the Director may revoke a license for failure to pay a required annual assessment, for failure to maintain the required surety bond, and for failure to comply with any directive or order of the Director.

2.6 Authority to Charge Examination Fee: Pursuant to RCW 19.146.228(2), and WAC 208-660-060(2), upon completion of any examination of the books and records of a licensee, the Department will furnish to the licensee a

1 billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-seven dollars
2 and seventy-eight cents (\$47.78) per hour that each staff person devoted to the examination.

3 **2.7 Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c)(i) and (ii) and WAC 208-660-165, the
4 Director may impose fines on the licensee for failure to maintain the required surety bond, and for failure to
5 comply with any directive or order of the Director.

6 **2.8 Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director
7 may prohibit a covered individual from participation in the conduct of the affairs of a licensed mortgage broker for
8 failure to maintain the required surety bond and for failure to comply with any directive or order of the Director.

10 III. NOTICE OF INTENT TO ENTER ORDER

11 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in
12 the above Facts and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.220.
13 Therefore, it is the Director's intention to ORDER that:

- 14 3.1 The mortgage broker license held by Respondent Construction Funding Corporation be revoked; and
- 15 3.2 Respondent Scott C. Michaels be prohibited from participation in the conduct of the affairs of any
16 licensed mortgage broker for a period of five (5) years; and
- 17 3.3 Respondents, jointly and severally, pay the annual assessment due, in the amount of \$530.86, as calculated
18 in 1.3 above; and
- 19 3.4 Respondents, jointly and severally, pay an examination fee of \$286.68, calculated at \$47.78 per hour for
20 each staff hour devoted to the investigation (6 hours); and
- 21 3.5 Respondents, jointly and severally, pay a fine of \$6000.00 for:
 - 22 a) Failure to maintain the required bond, calculated at \$100.00 per day for 30 days; and
 - 23 b) Failure to comply with a directive, calculated at \$100.00 per day for 30 days.

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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intent to Revoke License, Impose Fines and Prohibit from Participation in the Mortgage Broker Industry.

Dated this 24th day of February, 2004.

/s/ _____
CHUCK CROSS, ACTING DIRECTOR
DIVISION OF CONSUMER SERVICES
DEPARTMENT OF FINANCIAL INSTITUTIONS

Presented by:

Victoria W. Sheldon, Financial Legal Examiner

RCW 19.146.205 License – Application – Exchange of fingerprint data with federal bureau of investigation – Fee – Bond or alternative.

...

(4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection. [1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

Severability – 1997 c 106: See note following RCW 19.146.100. Adoption of rules – Severability – 1993 c 468: See notes following RCW 19.146.020. Effective dates – 1993 c 468: See note following RCW 19.146.200.

RCW 19.146.215 Continuing education – Rules. The designated broker of every licensee shall complete an annual continuing education requirement, which the director shall define by rule. [1997 c 106 § 11; 1994 c 33 § 11.]

Severability – 1997 c 106: See note following RCW 19.146.010.

RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules. (1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

...

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

...

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201(1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265;

...

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

...

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director – Hearing – Sanction. The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

RCW 19.146.223 Director – Administration and interpretation. The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

RCW 19.146.228 Fees – Rules – Exception. The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; [1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

WAC 208-660-042 Continuing education requirement. (1) The principal or designated broker of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later than the last business day of January 1996.)

[Statutory Authority: [RCW 43.320.010](#), [19.146.223](#). 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091, § 50-60-042, filed 6/21/95, effective 7/22/95.]

WAC 208-660-060 Department's fees and assessments.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

WAC 208-660-150 Disclosure of significant developments. (1) A licensee must notify the director in writing within thirty days after the occurrence of any of the following developments:

- (a) Licensee's filing for bankruptcy or reorganization.
 - (b) Receipt of notification of license revocation procedures in any state against the licensee.
 - (c) The filing of a felony indictment or information related to mortgage brokering activities of the licensee, or any officer, director, principal, or designated broker of the licensee.
 - (d) The licensee, or any officer, director, principal, or designated broker of the licensee being convicted of a felony.
 - (e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant decline in value of an approved alternative held by the director.
 - (f) The filing of any material litigation against the licensee.
- (2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal place of business or any of its branch offices.
- (3) A licensee must notify the director in writing within five days after a change in the licensee's:
- (a) Name or legal status (e.g., from sole proprietor to corporation, etc.);
 - (b) Mailing address or telephone number;
 - (c) President, partner, designated broker, or branch office manager;
 - (d) Trust account (e.g., change in the status, location, or account number);
 - (e) State master business license; or
 - (f) Standing with the state of Washington secretary of state.

[96-04-028, recodified as § 208-660-150, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091, § 50-60-150, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94, effective 2/7/94.]

WAC 208-660-160 License application denial or condition; license suspension or revocation. The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any

principal or designated broker of the applicant or licensee:

(1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;

(13) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act. Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.